

Anderson - Direct/Bernick

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1 argument in part is -- reflects an issue of their own creation.
2 We asked them for all of what they had to support these claims.
3 This witness' people were given the results of that request.
4 Your Honor will well recall how arduous our efforts were to
5 find anything else.

6 In this particular case we have industrial hygiene
7 data that describes the categories. We take exactly the
8 definition for those categories that was used to collect that
9 or organize that industrial hygiene data, and then her people
10 go and review the PIQs where the PIQs say I was an X, then we
11 take it at face. Where they say -- don't say it, we then
12 review the attachments to see what category they've fallen in.

13 What counsel's argument says is that you can't -- you
14 don't even have -- you know, it's not a question of competent
15 evidence. It has nothing to do with the issue of competence.
16 The question is whether it is probative evidence -- relevant
17 evidence that you have an industrial hygienist who has studied
18 and gathered data with respect to what is definitionally the
19 same exposure, or whether in every single asbestos case you
20 have to have somebody -- industrial hygienist that was there at
21 the time and walked around with each individual claimant to get
22 their particular exposure at the time.

23 Now, he may say, well, that's what really is
24 necessary to do an industrial hygiene analysis. Maybe that's
25 what he wants to say. It's completely different from what

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1 they've said in every other context, which is that none of this
2 really matters scientifically.

3 But that would be a position that would go to the
4 weight of the industrial hygiene data for its application to
5 this group of people. It does not go to admissibility, and not
6 only that, it's completely impossible and a farfetched notion
7 of relevance, but whatever it is, it's a question of probative
8 value. It is not a question of admissibility. Admissibility
9 is governed completely and utterly by Rule 702 and 703.

10 This witness was qualified as an expert with respect
11 to risk assessment. She has now said that the basis of her
12 opinion is the information that was provided by the industrial
13 hygienist. Seven 0 two and 703 govern the totality of that
14 equation. So I just don't understand what it is that the
15 objection is, but I'd like to get the witness' answer to my
16 question finally, so that we can go on and conclude.

17 THE COURT: Well, I understand the basis for the
18 objection. I think, however, you know, the -- as we keep
19 talking in this case about the sauce for the goose and sauce
20 for the gander, well, it's going to be a problem on the other
21 side, too. So I know your evidence isn't going to come in the
22 same way, but nonetheless, at some point in time these
23 claimants have to prove exposure.

24 And at this point in time these plants don't operate
25 with this product in place anymore, so we're going to have a

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1 trust at some point, folks, that have to pay claims, and I'm
2 here to tell you at this point the evidence is in. The PIQs
3 are finished. The x-rays have been submitted, and this Court's
4 order was very clear the current claims don't get a second bite
5 at this apple.

6 MR. FINCH: I join in Mr. Mullady's objection. I
7 would note for the record though that the personal injury
8 questionnaires do not ask the claimants to identify who they're
9 testifying experts would be as an industrial hygienist for the
10 purposes of working up an individual exposure assessment for
11 that individual person. None of your orders ordered them to --

12 THE COURT: That's correct.

13 MR. FINCH: -- identify their testifying experts.
14 That is an individual exposure assessment question --

15 THE COURT: Yes, it is.

16 MR. FINCH: -- that would be at issue in an
17 individual case.

18 THE COURT: Yes, it would.

19 MR. FINCH: Our basic objection is a relevance of
20 risk-based population estimates are relevant to the question of
21 individual causation in each individual case as to which no
22 plaintiff has been required to put on their causation proof
23 through the questionnaires. That's the basis for the
24 objection.

25 MR. BERNICK: I'd be happy to debate -- I'm sorry.

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1 THE COURT: The individuals have not been required to
2 produce that type -- that level of witness identification.
3 They have been required to file their proofs of claim and to
4 address the information by way of discovery in response to the
5 PIQs, and this Court's orders have been very clear with respect
6 to the fact that they have been required to provide that
7 information. The objections are noted. I still believe this
8 is going to go to weight. Nonetheless, I am going to take this
9 -- as I said before, when I get the whole record, I will take a
10 look at all of these objections in the context when I have a
11 chance to take a look at the whole record. Mr. Mullady.

12 MR. MULLADY: Yes, Your Honor. Respectfully, I do
13 respect the Court's ruling. One additional basis for my
14 objection. We represent the future claimants in this case, as
15 the Court is aware. Our future claimants, of course, did not
16 submit information in the form of PIQs.

17 THE COURT: Yes, sir.

18 MR. MULLADY: We, therefore, would object to the
19 admissibility of this evidence as to us in its entirety, and
20 failing that -- well, we would object on that basis and
21 principally under Rule 403, because whatever probative value
22 that evidence would have as to future claimants is greatly
23 outweighed by the prejudicial effect of using, for example,
24 mean averages of exposures taken from actual claimant and
25 applying those averages to screen current claimants which are

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1 then extrapolated to exclude the claims and disallow in effect
2 the claims of thousands of future claimants.

3 THE COURT: Now, wait.

4 MR. BERNICK: Now, yes.

5 THE COURT: First of all, I am in no way disallowing
6 any future client's claims or current -- future demand holders'
7 claims. We've had that information on this record for quite
8 some time. That's premise Number 1. Premise --

9 MR. MULLADY: I said in effect. I'm sorry.

10 THE COURT: Premise Number 2 is that you're here
11 representing those people who obviously are currently alive.
12 Whether or not they know that they have a particular asbestos
13 disease, they are alive. They had to have worked or been
14 exposed to a Grace product, and this evidence as is clearly
15 relevant to them as it is to a current claim holder. And
16 that's why you're here, Mr. Mullady. You stand in their shoes,
17 and every bit of discovery work you did is for their benefit,
18 so the fact that they are not here and don't know that they may
19 exist right now, that's why you're here, sir, and as a result,
20 your work is clearly as relevant, and you stand in their shoes,
21 and that objection is overruled on that basis. Mr. Bernick.

22 MR. BERNICK: Yes, I'm tempted to respond
23 substantively.

24 THE COURT: You don't need to respond. You just won
25 that objection temporarily --

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1 MR. BERNICK: Yes, I --
2 THE COURT: -- and if there's an issue down the road,
3 you'll brief it.
4 MR. BERNICK: Well, we'll -- we're looking forward to
5 getting into that so --
6 THE COURT: All right. You may answer it, Doctor.
7 MR. BERNICK: Can get I get --
8 BY MR. BERNICK:
9 Q Dr. Anderson, the question is whether in your view as to
10 Categories B, D, and E --
11 THE COURT: No, it was to A and C, actually.
12 Q Okay. Well, to A and C -- I happened to begin with A and
13 C. I'm going to get to all of them. What is your opinion on
14 whether there is reliable science to support -- based upon the
15 information that you have to support the proposition that their
16 diseases may have been caused in part or in whole by exposure
17 to Grace asbestos?
18 A For the A's and C's, as I've said before, I think I have
19 been very generous, but I have said that those claims should be
20 evaluated further. That there is some reliable scientific
21 evidence that points that direction.
22 Q Okay. Same question with respect to B, D, and E.
23 A For B's, D's, and E's, the cumulative exposure values --
24 the maximum of cumulative exposure values are so small. They
25 are so very small as to not exceed any benchmark. I do not

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1 think there is such evidence, and I do not think they need to
2 be considered in the next evaluation.

3 MR. BERNICK: Thank you. Now, Your Honor, I do --

4 THE COURT: Does that mean, Doctor, that your view is
5 that there is no reliable scientific evidence to support the
6 proposition that exposure to Grace's product caused any
7 person's disease in Categories B, D and e?

8 THE WITNESS: That's correct.

9 THE COURT: Thank you.

10 MR. BERNICK: Your Honor, I -- just -- maybe we can
11 take up the issue after lunch, but I would tender as summaries,
12 and I think established the predicate from the witness already,
13 the Rule 1006 requirements for Exhibits 2276, 2277, 2279, 228
14 --

15 THE COURT: Wait. I'm sorry. 2276, 2277?

16 MR. BERNICK: 2279, 2282 and 2291 to 96. I'd ask
17 that each and every case, whether the exhibit -- and I only
18 picked out the ones that reflect the data -- whether they
19 accurately reflected the data that she had mustered relating to
20 the topic reflected in the exhibit. So, we would make that
21 proffer. I don't know if there's an objection now, or if you'd
22 like to take that up after the break. Either way is fine.

23 UNIDENTIFIED ATTORNEY: After the break.

24 MR. BERNICK: And subject to that we would pass the
25 witness.

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Recess

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1 THE COURT: All right. We'll return with the
2 question of admissibility of 2276, 77, 79, 82, 91 through 96
3 after lunch. And --

4 MR. BERNICK: I would note that my examination this
5 morning, after we factor in about 25 minutes of colloquy,
6 lasted for about an hour and 50 minutes --

7 UNIDENTIFIED ATTORNEY: Two hours and ten minutes.

8 THE COURT: Two hours and ten minutes.

9 MR. BERNICK: Well, after you take into consideration
10 the 20 minutes that we just spent on one objection and the voir
11 dire, which took ten minutes.

12 UNIDENTIFIED ATTORNEY: Congratulations.

13 THE COURT: All right. We will be in recess until
14 one p.m.

15 MR. BERNICK: Thank you, Your Honor.

16 THE COURT: Do you have your case cite --

17 (Recess)

18 THE CLERK: -- come to order.

19 THE COURT: Please be seated. Mr. Bernick?

20 MR. BERNICK: Yes. I think -- we've given the other
21 side the --

22 THE CLERK: Mr. Bernick, talk into the mike, please.

23 MR. BERNICK: Yes. I'm sorry. We've given the other
24 side the opportunity to take a look at Exhibits 2276, 77, 79,
25 82, 91 and -- 91 through 96, which are proffered as summaries

Recess

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1 under Rule 1006. I'm told that beyond preserving -- making and
2 therefore preserving the prior objection that was lodged as to
3 the conversion from PCM to PCME, that with that exception there
4 is no objection to the proffer, and therefore we would ask to
5 have those admitted, and ask Your Honor to, again, overrule the
6 objection that now is being made for preserving the record to
7 the -- to anything that's based in any way, shape, or form
8 under the -- on PCM conversion.

9 THE COURT: All right. Well, Exhibits 2276, 77, 79,
10 82, 91 through 96 are admitted. I have previously overruled
11 that objection, but as I indicated I am going to be looking at
12 all of these objections, every objection, when I get the whole
13 transcript and the case ready for decision.

14 MR. BERNICK: There are two other small matters
15 before Mr. Mullady starts his cross examination of Dr. Anderson
16 -- I think you may want to help move things along -- with
17 respect to scheduling the ZAI hearing, I am told by Mr. Kramer
18 that Mr. Baena is available on the 22nd, as is Mr. Scott.
19 Messages have been left with Mr. Westbrook's office.
20 Apparently Mr. Westbrook has an enviable schedule, because he's
21 on vacation today, as well. So -- but people are optimistic
22 that he'll be able to respond promptly and will be able to do
23 this on the 22nd. My proposal would be that we schedule it on
24 that basis, and if it turns out that Mr. Westbrook is not
25 available on that date, that we'll let the Court know, and then

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1 I guess we'll have to have a short call to try to schedule an
2 alternative date.

3 THE COURT: All right. That's fine.

4 MR. BERNICK: With respect to Rule 1006, I know that
5 Your Honor has received our cases and the other side's cases.
6 Mr. Ansbro gave me another case, U.S. v. Goss (phonetic), which
7 --

8 THE COURT: Yes. I just looked at it.

9 MR. BERNICK: Which we'd be happy -- that's the case
10 where their -- the underlying evidence for the summary was
11 excluded on hearsay grounds, and essentially you couldn't
12 revive it. But be that as it may, we have not had an
13 opportunity to otherwise look at this case, but that's not a
14 problem. So, we're happy to take Your Honor's ruling.

15 THE COURT: All right. Let's finish the evidence.
16 I'll deal with the issues of Rule 1006 and the 408 issue after
17 the witness is finished today. Do you have any other questions
18 for Dr. Anderson?

19 MR. BERNICK: No, we don't. We now pass the witness.

20 THE COURT: All right. Mr. Mullady?

21 MR. MULLADY: Thank you, Mr. Bernick.

22 CROSS EXAMINATION

23 BY MR. MULLADY:

24 Q Good afternoon, Dr. Anderson.

25 A Good afternoon.

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1 Q I want to begin by reviewing the sequence of your analysis
2 for your disposition of mesothelioma claims. And I've put on
3 the ELMO here the same exhibit that we have in the exploded
4 version in front of you. As I understand what you did, you put
5 all the PIQ claimants into these five categories, A through E,
6 correct?

7 A Not exactly.

8 Q All right. Well, they were assigned either by self-
9 identification, or by review of their underlying back-up
10 material, they were assigned a category?

11 A Yes, to the extent that was possible.

12 Q To the extent possible?

13 A Yes.

14 Q And then, in terms of the duration of their exposure, you
15 have assumed a 45-year full occupational exposure at the
16 highest exposure product for the maximum of any 45-year period,
17 correct?

18 A That's correct.

19 Q And you've concluded, on the basis of your entire
20 analysis, not just the two pieces that I articulated, that it
21 is not scientifically plausible that for anyone in the B, D,
22 and E categories, with 45 years of exposure to Grace asbestos
23 products to have contracted mesothelioma from that exposure?
24 Did I understand that correctly?

25 A I think that's, in essence, what I said. But the first

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1 part of your question said anyone, and I'm addressing these
2 exposure -- nature of exposure categories, and -- but I think
3 the answer is yes, if I understand your question.

4 Q Very good. Now, you also discussed this exhibit, 2291,
5 which I have placed on the ELMO, which you told us was the
6 percentage breakdown of mesothelioma claimants by nature of
7 exposure, the self-identified versus those who were placed into
8 the B, D, and E, or A and C, or F categories on the basis of
9 best evidence, correct?

10 A That's correct.

11 Q And you told us that the results are similar, 77 percent
12 for the self-identified in B, D, and E, and 79 percent for the
13 best evidence in B, D, and E, correct?

14 A That's right.

15 Q So, what you've got here is you've allocated 77 to 79
16 percent of all Grace mesothelioma claimants in these
17 categories, B, D, and E, where according to you they could not
18 plausibly have contracted mesothelioma? Is that right?

19 A No. I didn't say they couldn't plausibly have attracted
20 mesothelioma. I said the scientific evidence that they
21 contracted it from exposure to Grace products is not there,
22 there's no such evidence.

23 Q It would have been scientifically implausible for anyone
24 in these categories to have contracted mesothelioma from Grace
25 product exposure, right?

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1 A For these exposures I said that that is the reliable
2 scientific evidence, and I've said that there is no scientific
3 evidence that I have that would suggest that that would not be
4 the case.

5 Q Yet --

6 A There would be a very low probability of that, that
7 someone would be at a more extreme exposure to a Grace product
8 than has been displayed in this analysis.

9 Q Yet --

10 A For those categories.

11 Q I'm sorry.

12 A Sorry.

13 Q I don't mean to step on your answers. Yet, 77 to 79
14 percent of these mesothelioma claimants against Grace who
15 you've put into these -- into this category, who put the -- or,
16 who put themselves there, have mesothelioma, correct?

17 A I didn't -- they were labeled as such. I'm not a
18 physician. I did not diagnose them.

19 Q Well, recognizing that you did not diagnose them, if 79
20 percent of them had mesothelioma, and you've assumed 45 years
21 of continuous occupational exposure to asbestos, and you've
22 considered as part of your analysis that even if it wasn't
23 Grace exposure, you would assume it was Grace exposure. This
24 79 percent of people have mesothelioma, which, in your view,
25 was not occupationally related to asbestos exposure?

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1 MR. BERNICK: Objection to the form of the question.
2 It's about three or four questions, more of an argument than a
3 question.

4 THE COURT: No. I think that's proper cross.
5 Overruled.

6 Q Do I have that right, ma'am?

7 A I didn't quite -- what is the exact question?

8 Q I'm asking you if you've concluded that 79 -- 77 to 79
9 percent of all of the people with mesothelioma who have claimed
10 against Grace, that it's scientifically implausible that they
11 got that mesothelioma exposure from 45 years of occupational
12 exposure to asbestos -- Grace asbestos?

13 A That's not correct.

14 Q Why is that incorrect?

15 A I said that it's implausible that they got their
16 mesothelioma from 45 years of exposure, eight hours a day,
17 every day, to a Grace product.

18 Q Right. But where the plaintiffs had evidence of exposure
19 to non-Grace asbestos, you've concluded that it was all Grace
20 exposure, have you not?

21 MR. BERNICK: Objection to the form of the question.

22 A I don't quite understand the question.

23 Q One of the conservative, as you've coined it in your
24 reports, aspects of your analysis, I thought, was that you
25 assumed that a claimant had exposure to Grace asbestos for the

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1 entire course of his working life, even if he had exposure to
2 non-Grace asbestos, correct?

3 A I think we're getting it a little bit twisted. I said
4 that I did not take a discounting value for buildings that
5 might have had -- or for situations that might have involved
6 non-Grace products. I didn't scale the values down by assuming
7 that only 20 percent of the buildings had non -- had -- only 20
8 percent of the buildings had even sprayed on or troweled on
9 products and 80 percent didn't. So, I could have scaled back,
10 saying, you know, it's a probability that people didn't go
11 every day to one of those 20 percent buildings, but I didn't.
12 It would also have been conceivable to collect information to
13 try to get what was Grace's share of that 20 percent. I did
14 not do that, either. So, if you mean that in this analysis I
15 assumed for these job categories that for that occupational
16 category it was a Grace exposure, that's correct.

17 Q Continuously over 45 years?

18 A That's right.

19 Q Okay. And despite that continuous exposure over 45 years
20 to Grace asbestos, counting no other exposures to anybody
21 else's asbestos, it's your view that 77 to 79 percent of these
22 people cannot scientifically plausibly claim that they got
23 their mesothelioma from that exposure?

24 MR. BERNICK: I'm going to object to the form of the
25 question.

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1 Q Is that right?

2 MR. BERNICK: Excuse me. Object to the form of the
3 question. If the question is whether her analysis assumes all
4 exposure to Grace asbestos, I understand that. If the question
5 is her analysis assumes all exposure to Grace asbestos plus
6 whatever other asbestos exposure was, that's a different
7 question. And I think we have to be clear in asking the
8 witness which hypothetical, or which assumption we're asking
9 her to verify.

10 MR. MULLADY: I don't think it's unclear at all. And
11 the witness hasn't told me she didn't understand the question.

12 MR. BERNICK: Well --

13 A Well, I --

14 MR. MULLADY: Excuse me. There's a motion pending.

15 THE COURT: Okay. I think you need to restate the
16 question to make sure that it is clear which question you're
17 asking her, because I think in the process of her prior answer
18 it did get a little muddled. I'm not sure your question did,
19 but I think --

20 MR. MULLADY: I'd be happy to rephrase it, Your
21 Honor.

22 THE COURT: All right.

23 Q Dr. Anderson, you've assumed for the Grace mesothelioma
24 claimants that for the 45 years that they have worked in the
25 construction trades, they have worked around Grace asbestos --

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1 strike that. Let me start over. You've assumed that for the
2 45 years of occupational experience of these construction
3 workers who have made claims against Grace that their only
4 asbestos exposure has been to Grace products. Is that correct?

5 A That's --

6 Q Occupationally.

7 A I have not addressed what other asbestos exposures they
8 may have had, and if that's the point of confusion -- this
9 analysis deals with the concentration data that comes from
10 these job categories that goes into my analysis without
11 discounting the possibility that some of these products could
12 have been non-Grace products. These claimants may have had
13 other alternative exposures. I did not deal with other
14 alterative exposures.

15 Q But I thought you assumed that for the exposures -- for
16 the jobs that they were performing for the life of their
17 employment, that to the extent they had exposure to asbestos it
18 was Grace asbestos. Am I wrong about that?

19 A For these nature of exposure categories in this analysis,
20 we were analyzing the job-specific exposure concentration data,
21 the exposure frequency duration for these jobs for those
22 categories. That's correct.

23 Q Okay. You've been doing consulting work for W.R. Grace
24 for over 20 years. Is that right, Dr. Anderson?

25 A I have had some -- I have worked for W.R. Grace

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1 periodically at one point, and then not for a long period of
2 time, and another point, so --

3 Q Fair enough. I think you told us at deposition that the
4 first case that you worked on many years ago was the school
5 class action case in the late 1980's?

6 A Yes. I did that, and then many, many, many years elapsed
7 before I worked for W.R. Grace again.

8 Q In addition to working on that case for Grace, you've
9 worked on the ZAI attic insulation case, correct?

10 A That's right.

11 Q You've worked on the environmental cost recovery case for
12 Grace?

13 A Correct.

14 Q And now you're working for Grace on this estimation case.
15 Is that right?

16 A Yes.

17 Q Other than Grace, as I understand it you've done asbestos-
18 related consulting work for the Big Three automakers -- Ford,
19 Daimler-Chrysler, and GM. Is that right?

20 A Yes.

21 Q You've never been retained by an individual asbestos
22 plaintiff or plaintiff attorney in an asbestos case, or offered
23 testimony in an asbestos personal injury case at the request of
24 a plaintiff's attorney. Is that correct?

25 A No, I haven't. I've never been asked.

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1 Q Is it fair to say that all of your asbestos-related work
2 for litigation purposes has been done for defendants, and none
3 of it has been done for plaintiffs?

4 A No.

5 Q It's not fair to say? Or that's true?

6 A That's not true. I did litigation related work on
7 asbestos while I was at EPA, and that's not for defendants, so
8 I don't know how you classified it. But I was very active in
9 the Reserve Mining case, which was an early -- the earliest, I
10 think, environmental case involving asbestos exposure,
11 particularly by ingestion.

12 Q If I confine my question to your private practice, would
13 that be a correct statement?

14 A Then -- would you ask me the question again?

15 Q Yes.

16 A Sorry.

17 Q That in your non-governmental private consulting practice
18 you've never undertaken to consult for the plaintiff's side of
19 an asbestos matter. Is that correct?

20 A I said I've never been asked. That's correct.

21 Q And you never -- okay. Fair enough. Something, as I
22 understand it, you've also never done for Grace before this
23 estimation proceeding is to use risk assessment to opine in an
24 individual personal injury asbestos case that a plaintiff
25 bringing a claim against Grace did or did not have a

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1 meritorious claim. Is that correct?

2 A That's correct.

3 Q Do you agree, Doctor, that the point of all risk
4 assessment modeling is to determine population risk, not
5 individual risk?

6 A No.

7 Q Did you review the expert reports of Dr. Peter Lees in
8 this case?

9 A Yes, I did.

10 MR. MULLADY: Can we have ACC/FCR-535, please?

11 MR. BERNICK: Do we have a copy of any of these
12 exhibits that you're going to use?

13 MR. MULLADY: Jim? Sorry.

14 THE COURT: What's the exhibit number, please?

15 MR. MULLADY: 535.

16 THE COURT: All right.

17 MR. BERNICK: Can we get a bunch of them, so we don't
18 have to keep on doing this?

19 MR. MULLADY: We can give you the deck. Give one to
20 the Court. Thank you.

21 Q What we have on the screen, Dr. Anderson, Dr. Lees' -- I'm
22 looking for the date --

23 MR. BERNICK: Can we get the rest? I'm sorry.

24 MR. MULLADY: I'm sorry. We didn't have the -- okay.

25 MR. BERNICK: Okay. Go ahead. I'm sorry. Go ahead.

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1 Q We have Dr. Lees' July rebuttal report to the report of
2 Steven Hays (phonetic) on the screen. At Page 6 Dr. Lees
3 writes, in response to something Mr. Hays had said, "The point
4 of all risk assessment modeling, and in particular that
5 conducted by others as part of this case," and he's referring
6 to the estimation case, "is to determine population risk, not
7 individual risk. Thus, the appropriate exposure assessment is
8 for the population, not individuals."

9 MR. BERNICK: Your Honor, I would object to this line
10 of examination. First of all, there can't be impeachment
11 because it's not her statement. Second, if it's offered for
12 the truth of the matter asserted in the report, that's
13 improper. And further, it violates the stipulation. Under the
14 stipulation in this case, whatever it is that the witness has
15 reviewed but not relied upon cannot be used for any purpose in
16 connection with the examination of the witness. I don't think
17 it's been established that she relied upon this report.

18 MR. MULLADY: That grossly overstates the
19 stipulation, Your Honor. In no way --

20 MR. BERNICK: Well, let's get the stipulation,
21 because I believe that's exactly --

22 MR. MULLADY: Mr. Bernick? Excuse me. There is no
23 limitation on the use of impeachment material in cross
24 examination of experts.

25 THE COURT: Well, that may be, but this is not proper

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1 impeachment. This isn't this witness's statement, so you can't
2 impeach her with somebody else's statement.

3 MR. MULLADY: Fine. I'll move on, Your Honor. Thank
4 you.

5 Q Have you read the trial testimony of your former
6 colleague, Dr. Rodricks, in this case?

7 A No, I haven't.

8 Q Are you aware of what Dr. Rodricks' views are with respect
9 to risk assessment?

10 A I'm sorry. I'm not quite hearing you. Am I aware of?

11 Q I'm sorry. Are you aware of Dr. Rodricks' testimony about
12 the use of risk assessment that he gave in this trial, in this
13 proceeding?

14 A I'm not entirely aware of exactly what he said. I've
15 known Dr. Rodricks for so many years. We've served on so many
16 panels together, I know his views. I can probably imagine what
17 he said, but I have not seen the transcript.

18 Q Do you agree with the general proposition that regulatory
19 risk-based standards are not useful to evaluate disease
20 causation in particular individuals?

21 A Not as a declarative sentence, and I can tell you why. It
22 is useful and proper to use the approaches and guidelines of
23 public health agencies if you can -- if you are seeking to rule
24 out a risk. That is, you would calculate the upper-bound risk,
25 and if the risks don't exceed that, then you know that you

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1 don't have a risk. But if they are lower than that, you can't
2 use the public health agencies' approaches to define a real
3 risk because they are overstatements. But if your risk is
4 lower than that, you can be quite certain that you're not
5 dealing with a risk. And I did something similar here with the
6 screening exercise.

7 Q Do you agree that to assess disease causation in an
8 individual you have to look at that specific individual's
9 exposure?

10 A Well, not necessarily, because if an individual -- I mean,
11 everybody would like to know exactly all the details of every
12 situation, whether it's an individual or a population. It's
13 usually not possible. But in this exercise the analysis
14 addressed exposure to jobs, job categories. If an individual
15 is in one of these job categories, I think it's a fair
16 appraisal of the data, fair analysis of the data to say if this
17 person is in this job, this would be the likely exposure to
18 that person if they had the long-term exposure, and so forth.

19 Q All right. Well, we're going to spend some time on that
20 in a few minutes. Let me ask you first, though, before we get
21 to that, about the methods that you used to review and comment
22 on the information submitted by the mesothelioma claimants
23 against Grace.

24 A Okay.

25 Q As I understand it from your report, you reviewed

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1 materials submitted by 1,596 people who have filed claims
2 against Grace alleging that they developed mesothelioma because
3 of exposure to asbestos in Grace products, correct?

4 A That's right.

5 MR. MULLADY: And could we have ACC/FCR-432, please?
6 Actually, we don't need that. You can take that down.

7 Q The material that you reviewed, as I understand it,
8 consisted of PIQs that were submitted by the claimants, along
9 with any attachments and supporting material, correct?

10 A We did review that, yes.

11 Q Yes.

12 MR. MULLADY: Could we go to the ELMO, please?

13 Q Now, before I get into my questions about your analysis of
14 that data, I want to get something -- make something perfectly
15 clear for the record that I saw -- that you had actually given
16 us on this chart 2291, which is on the ELMO, and that is that
17 66 percent of the mesothelioma claimants against Grace did not
18 provide sufficient information to put them into a nature of
19 exposure category. Is that correct?

20 A That's correct.

21 Q So, your analysis concerns less than half, specifically,
22 44 percent of the mesothelioma claimants who have brought their
23 claims in this bankruptcy case against Grace. Is that correct?

24 A The slide says that 66 percent of those claimants did not
25 provide sufficient information to be classified.

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1 Q So, 66 percent of the data that would have been -- strike
2 that. And then your procedure was, if a mesothelioma claimant
3 identified a nature of exposure code for his direct exposure in
4 Part 3 of the PIQ, that you accepted that definition as an
5 accurate determination of his nature of exposure?

6 A That's right.

7 MR. BERNICK: Let me -- if they filled out the form
8 that way? Or -- what was the --

9 MR. MULLADY: I'll repeat the question.

10 MR. BERNICK: I'm sorry.

11 MR. MULLADY: For counsel's benefit I'll repeat the
12 question.

13 MR. BERNICK: Thank you.

14 Q If a meso claimant identified a nature of exposure code
15 for his direct exposure in Part 3 of the PIQ, you accepted that
16 identification as an accurate determination of his nature of
17 exposure?

18 A I put -- that person would have gone into that nature of
19 exposure category. I didn't say it was accurate. I said we
20 didn't second guess what the SEF identifiers checked. We
21 didn't try to prove or disprove that they checked the correct
22 box.

23 Q Understood. I just want to make sure -- let's go to
24 ACC/FCR-432 to your report.

25 UNIDENTIFIED SPEAKER: It's off the ELMO.